

TITLE 26A. TAXATION

Chapter 26A.01. Sales and Use Tax.

26A.01.010. Title.

This article shall be known as the "Uniform Local Sales and Use Tax Ordinance" of Brigham City.

26A.01.020. Purpose.

The 45th session of the Utah Legislature authorized municipalities of the state of Utah to enact sales and use tax ordinances imposing a seven-eighths of one percent tax.

It is the purpose of this title to levy and impose a seven-eighths percent local option sales and use tax, to authorize and designate the Utah State Tax Commission as agent for the municipality to collect the tax and to conform with the requirements of the Uniform Local Sales and Use Tax Law of Utah, Chapter 9, Title 11, Utah Code Annotated, 1953.

26A.01.030. Effective Date.

This title shall become effective as of 12:01 a.m., July 1, 1983. The provisions of the previously enacted uniform local sales and use tax ordinance of the municipality which is repealed hereby and which are in conflict herewith continued effective until 12:00 midnight, June 30, 1983. The provisions of this article which are not in conflict with said former ordinance shall be deemed to be a continuation thereof and any rights, duties and obligations arising thereunder shall not in any way be deemed abrogated or terminated.

26A.01.040. Sales Tax.

A. Retail Sales.

1. From and after the effective date of this title, there is levied and there shall be collected and paid a tax on every retail sale of tangible personal property, services and meals made within the municipality at the rate of seven-eighths percent.

2. For the purpose of this title, all retail sales shall be presumed to have been consummated at the place of business of the retailer unless the tangible personal property sold is delivered by the retailer or his agent to an out-of-state destination or to a common carrier for delivery to an out-of-state destination. If a retailer has no permanent place of business in the state, or has more than one place of business, the place or places at which the retail sales are consummated shall be as determined under the rules and regulations prescribed and adopted by the state tax commission. Public utilities as defined by Title 54, Utah Code Annotated, 1953, shall not be obligated to determine the place or places within any County or municipality where public utilities services are rendered, but the place of sale or the sales tax revenues arising from such service allocable to the municipality shall be as determined by the state tax commission pursuant to an appropriate formula and other rules and regulations to be prescribed and adopted by it.

B. Substitution of State Law References. Retailer's License Not Required. Exclusions.

1. Except as hereinafter provided, and except insofar as they are inconsistent with the provisions of the Uniform Local Sales and Use Tax Law of Utah, all of the provisions of Chapter 15, Title 59, Utah Code Annotated, 1953, as amended, and in force and effect on the effective date of this title, insofar as they relate to sales taxes, excepting sections 59-15-1 and 59-15-21 thereof, and excepting for the amount of the sales tax levied therein, are hereby adopted and made a part of this article as though fully set forth herein.

2. Wherever, and to the extent that in Chapter 15 of Title 59, Utah Code Annotated, 1953, the state of Utah is named or referred to as the taxing agency, the name of this municipality shall be substituted therefor. Nothing in this subparagraph (2) shall be deemed to require substitution of the name of the municipality for the word "state" when that word is used as part of the title of the state tax commission, or of the Constitution of Utah, nor shall the name of the municipality be substituted for that of the state in any section when the result of that substitution would require action to be taken by or against the municipality or any agency thereof, rather than by or against the state tax commission in performing the functions incident to the administration or operation of this article.

3. If an annual license has been issued to a retailer under section 59-15-3, Utah Code Annotated, 1953, an additional license shall not be required by reason of this section.

4. There shall be excluded from the purchase price paid or charged by which the tax is measured:

a. The amount of any sales or use tax imposed by the state of Utah on a retailer or consumer;

b. Receipts from the sale of tangible personal property on which a sales or use tax has become due by reason of the same transaction to any other municipality and any County in the state of Utah, under a sales or use tax ordinance enacted by that County or municipality in accordance with the Uniform Local Sales and Use Tax Law of Utah.

26A.01.050. Use Tax.

A. Imposition and Rate. An excise tax is hereby imposed on the storage, use, or other consumption in this municipality of tangible personal property from any retailer on or after the operative date of this article for storage, use or other consumption in the municipality at the rate of seven-eighths percent of the sales price of the property.

B. Substitution of State Law References; Exclusions.

1. Except as hereinafter provided, and except insofar as they are inconsistent with the provisions of the Uniform Local Sales and Use Tax Law of Utah, all of the provisions of Chapter 16, Title 59, Utah Code Annotated, 1953, as amended and in force and effect on the effective date of this article, applicable to use taxes, excepting the provisions of sections 59-16-1 and 59-16-25 thereof, and excepting for the amount of the tax levied therein, are hereby adopted and made a part of this section as though fully set forth herein.

2. Wherever and to the extent that in Chapter 16 of Title 59, Utah Code Annotated, 1953, the state of Utah is named or referred to as the taxing agency, the name of Brigham City shall be substituted therefor. Nothing in this subparagraph (2) shall be deemed to require the substitution of the name of this municipality for the word "state" when that word is used as part of the title of the state tax commission, or of the Constitution of Utah, nor shall the name of the municipality be substituted for that of the state in any section when the results of that substitution would require action to be taken by or against the municipality or any agency thereof, rather than by or against the state tax commission in performing the functions incident to the administration or operation of this article.

3. There shall be exempt from the tax due under this section:

a. The amount of any sales or use tax imposed by the state of Utah upon a retailer or consumer;

b. The storage, use or other consumption of tangible personal property, the gross receipts from the sales of or the cost of which has been subject to sales or use tax under a sales or use tax ordinance enacted in accordance with the Uniform Local Sales and Use Tax Law of Utah by any other municipality and any County of the state.

26A.01.060. Mayor to Execute Documents for Distribution of Revenues.

The mayor is authorized to execute whatever documents are necessary to distribute sales and use tax revenues on the combination of point of sale and population factors set forth in section 11-9-5, Utah Code Annotated, 1953.

26A.01.070. Contract With State Tax Commission.

Heretofore, this municipality has entered into an agreement with the state tax commission to perform all functions incident to the administration or operation of the sales and use tax ordinance of the municipality. That contract is hereby confirmed and the mayor is hereby authorized to enter into such supplementary agreement with the state tax commission as may be necessary to the continued administration and operation of the local sales and use tax ordinance of the municipality as reenacted by this article.

26A.01.080. Penalties.

Any person violating any of the provisions of this title shall be deemed guilty of a misdemeanor, and upon conviction thereof, shall be punishable by a fine in an amount less than two hundred ninety-nine dollars or imprisonment for a period of not more than six months, or by both such fine and imprisonment.

26A.02. Utility and Revenue Tax.

26A.02.010. Utility Tax.

A. There is hereby levied upon the business of every person or company engaged in business in Brigham City, Utah of supplying telephone, gas, culinary water, sewer or electric energy service as public utilities, an annual license tax equal to two percentum of gross revenue derived from the sale and use of the services of said utilities delivered from and after July 14, 1988, within the corporate limits of Brigham City, said

fee being in addition to the two percent franchise fee. This utility and revenue tax shall not, however, apply to non-municipal public utilities providing electrical services within the municipal limits of Brigham City, Utah.

B. Definitions.

Gross Revenue. Shall be construed to mean the revenue derived from the sale and use of public utility services within Brigham City, provided the "gross revenue" as applied to the telephone utility shall be construed to mean basic local exchange services revenue.

Basic Local Exchange Service Revenue. Revenues received from the furnishing of telecommunications network to either business, residential or other customers whether on a flat rate or measured basis, by means of an access line. Basic local exchange service revenues shall not include revenues obtained by the telephone public utility company from the provision of terminal telephone equipment services (such as basic telephone sets, private branch exchanges and key telephone systems), or from other telephone equipment which is obtainable from both the telephone company and other suppliers.

Public Utility Services. The sale and use of electric power and energy, natural gas, culinary water, sewer, and basic local exchange telephone service.

C. Remittance Date. Subject to the exception from taxation for non-municipal public utilities contained in section 26A.02.010A, within forty-five days after the end of each month in a calendar year, a public utility taxed hereunder shall file with the City treasurer of Brigham City a report of its gross revenue derived from the sale and use of public utility service in Brigham City as defined herein, together with a computation of the tax levied hereunder against the utility. Coincidental with the filing of such report, the utility shall pay to the City treasurer the amount of the tax due for that calendar month subject to said report.

26A.02.020. Revenue Tax.

A. Revenue tax on business in competition with public utilities. There is hereby levied upon the business of every person or company engaged in the business in Brigham City, Utah of supplying basic local exchange telephone service, as defined in section 26A.01.010A of this chapter, natural gas, culinary water, sewer, or electric energy service in competition with public utilities, an annual license tax equal to two percentum of the gross revenue derived from the sale and use of such competitive services sold, used or delivered within the corporate limits of Brigham City, after July 14, 1988.

B. Definitions. In Competition With Public Utilities. To trade in products or services within the same market as a public utility taxed under 26A.01.010A of this chapter.

However, not included within the definition of "In Competition With Public Utilities" are non-municipal public utilities providing electrical services within the municipal limits of Brigham City, Utah.

C. Remuneration Date. Subject to the exception from taxation for investor-owned public utilities contained in Section 26A.01.010 and 26A.02.020, within forty-five days after the end of each month in a calendar year any business taxed hereunder shall file with the City treasurer of Brigham City a report of its gross revenues derived from the sale and use of services specified hereunder rendered in competition with public utilities in Brigham City, together with a computation of the tax levied hereunder against such business. Coincidental with the filing of such report, the business shall apply to the City treasurer the amount of the tax due for the calendar month which is the subject of the said report.

26A.02.030. Commercial Consumers of Gas Or Electric Energy.

Any commercial consumer of gas or electric energy which is engaged in business in Brigham City, Utah, and which consumes natural gas or electrical energy provided by a public utility subject to the utility revenue tax imposed by this section shall be entitled to a rebate of that portion of the combined utility revenue tax and two percent franchise fee which exceeds three fourths of one percent of the gross sales of said commercial consumer.

For the purposes of this section it shall be deemed that the amount paid by each qualifying commercial consumer to each subject public utility for natural gas or electric energy includes a payment of two percent utility revenue tax and a payment of two percent franchise fee. The term "gross sales" as used in this section, shall be defined consistent with the definition of that term as found in the Internal Revenue Code effective for commercial consumer's taxable year during which a rebate is sought.

Rebate shall be made on a yearly basis to coincide with a commercial consumer's taxable year, as adopted for federal income tax purposes. Application shall be made to the City treasurer of Brigham City for the rebate provided herein no sooner than forty-five days and no later than four months after the close of the commercial consumer's taxable year.

26A.03. Mobile Telephone Service Revenue Tax.

26A.03.010. Definitions.

For purposes of this ordinance, the following terms are defined as follows:

A. CUSTOMER means:

- 1. The person or entity, having a place of primary use within the City, that contracts with the home service provider for mobile telecommunications services; or*
- 2. If the end user of mobile telecommunications services is not the contracting party, the end user of the mobile telecommunications services; but this clause applies only for the purpose of determining the place of primary use.*
- 3. CUSTOMER does not include:**
 - a. A reseller of mobile telecommunications service; or*
 - b. A serving carrier under an arrangement to serve the customer outside the home service providers licensed service area.*

B. DESIGNATED DATABASE PROVIDER means a corporation, association, or other entity representing all the political subdivisions of a state that is:

- 1. Responsible for providing an electronic database prescribed in subsection 119(a) of Chapter 4, Title 4 of the United States Code if the state has not provided such electronic database; and*
- 2. Approved by municipal and county associations or leagues of the state whose responsibility it would otherwise be to provide such database prescribed by Sections 116 through 126 of Chapter 4, Title 4 of the United States Code.*

C. ENHANCED ZIP CODE means a United States postal zip code of nine or more digits.

D. HOME SERVICE PROVIDER means the facilities-based carrier or reseller with which the customer contracts for the provision of mobile telecommunications services.

E. LICENSED SERVICE AREA means the geographic area in which the home service provider is authorized by law or contract to provide commercial mobile radio service to the customer.

F. MOBILE TELECOMMUNICATIONS SERVICE means commercial mobile radio service, as defined in Section 20.3 of Title 47 of the Code of Federal Regulations as in effect on June 1, 1999. For purposes of this ordinance, mobile telecommunications services shall not include:

- 1. Pager services using mobile devices that do not allow for two-way voice communication;*
- 2. Narrowband personal communications services; and*
- 3. Short message services (SMS).*

G. PLACE OF PRIMARY USE means the street address representative of where the customer's use of the mobile telecommunications service primarily occurs, which must be:

- 1. The residential street address or the primary business street address of the customer; and*
- 2. Within the licensed service area of the home service provider.*

H. PREPAID TELEPHONE CALLING SERVICES means the right to purchase exclusively telecommunications services that must be paid for in advance, that enables the origination of calls using an access number, authorization code, or both, whether manually or electronically dialed, if the remaining amount of units of service that have been prepaid is known by the provider of the prepaid service on a continuous basis.

I. RESELLER:

- 1. Means a provider who purchases telecommunications services from another telecommunications service provider and then resells, uses as a component part of, or integrates the purchased services into a mobile telecommunications service; and*
- 2. Does not include a serving carrier with which a home service provider arranges for the service to its customers outside the home service providers licensed service area.*

J. SERVING CARRIER means a facilities-based carrier providing mobile telecommunications service to a customer outside a home service providers or resellers licensed service area.

26A.03.020. Monthly Tax Levied.

There is levied upon every home service provider a tax of one dollar (\$1) per month for each telephone number assigned to any customer whose place of primary use is within the City. The home service provider may or may not pass this tax on to its customers. If the home service provider passes the tax on to the customer, and the tax is reflected on the customer's bill, the tax shall be shown on the bill as a flat rate municipal tax charge.

26A.03.030. Remittance Date.

A. *Within thirty (30) days after the end of each calendar month, the home service provider taxed hereunder shall file, with the City Treasurer, a report computing the tax. Coincidental with the filing of such report, the business shall pay, to the City Treasurer, the amount of the tax due for the calendar month subject to the report. If the 30th day after the end of each calendar month falls on a Saturday, Sunday, or state or federal holiday, the deadline for filing the monthly report and remitting payment for that month is extended to the next subsequent business day.*

B. Delinquent Payment. *Any payment not paid when due shall be subject to a delinquency penalty charge of ten percent (10 %) of the unpaid amount. Failure to make full payment and penalty charges within sixty (60) days of the applicable payment date shall constitute a violation of this ordinance. All overdue amounts, including penalty charges, shall bear interest until paid at the rate of an additional ten percent (10%) per annum.*

C. Reconciliation. *Within three (3) years after the filing of any report or the making of any payment, the City Treasurer may examine such report or payment, determine the accuracy thereof, and, if the City Treasurer finds any errors, report such errors to the home service provider for correction. If any tax, as paid, shall be found deficient, the home service provider shall within sixty (60) days remit the difference, and if the tax as paid be found excessive, the City shall within sixty (60) days refund the difference plus interest at the same rate as if such amount was deficient. In the event of a disagreement, the home services provider shall file under protest pending the resolution of the dispute between the parties or through the courts.*

D. Record Inspection. *The records of the home service provider pertaining to the reports and payment of the tax, including, but not limited to, any records deemed necessary by the City to calculate or confirm proper payment by the home service provider, shall be open for inspection by the City and its duly authorized representatives upon reasonable notice at all reasonable business hours of the home services provider within the statute of limitations period defined in the "Reconciliation" subsection above.*

E. Home Service Provider Duty to Cooperate on Record Inspection.

1. *In order to facilitate any record inspection, the home service provider shall, upon thirty (30) days prior written request:*

a. *Grant the City or its duly authorized representatives reasonable access to those portions of the books and records of the home service provider necessary to calculate and confirm property payment of the tax; or*

b. *Provide the City or its duly authorized representatives with reports containing or based on information necessary to calculate and confirm proper payment of the tax.*

2. *Any requests for such books, records, reports, or portions thereof shall specify in writing the purpose for such request. Any books, records, reports, or portions thereof provided by the home service provider to the City under a claim that such documents are confidential business records are hereby designated as "protected records" and shall not be copied or disclosed by the City to third parties without the written permission of the home service provider, unless such documents are determined by a court of law to constitute a public record within the meaning of the Utah Government Records Access and Management Act.*

26A.03.040. Requirement to Maintain Electronic Database or Enhanced Zip Code Listing.

A. *Electronic Database.*

1. *Provision of Database: The State may provide an electronic database to a home service provider; or, if the State does not provide such an electronic database, the designated database provider may choose to provide an electronic database to a home service provider.*

2. *Format:*

a. *Such electronic database, whether provided by the State or the designated database provider, shall be provided in a format approved by the American National Standards Institutes Accredited Standards Committee X 12, which, allowing for de minimis deviations, designates for each street address in the City including, to the extent practicable, any multiple postal street addresses applicable to one street location, the appropriate taxing jurisdictions, and the appropriate code identified by one nationwide standard numeric code.*

b. *Such electronic database shall also provide the appropriate code for each street address with respect to political subdivisions that are not taxing jurisdictions when reasonably needed to determine the proper taxing jurisdiction.*

c. *The nationwide standard numeric codes shall contain the same number of numeric digits, with each digit or combination of digits referring to the same level of taxing jurisdiction throughout the United States, using a format similar to FIPS 55-3 or other appropriate standard approved by the Federation of Tax*

Administrators and the Multistate Tax Commission or their successors. Each address shall be provided in standard postal format.

B. *Notice; Updates.* The State or designated database provider that provides or maintains an electronic database described above shall provide notice of the availability of the then-current electronic database and any subsequent revisions thereof, by publication in the manner normally employed for the publication of informational tax, charge, or fee notices to taxpayers in such State.

C. *User Held Harmless.* A home service provider using the data contained in an electronic database described above shall be held harmless from any tax, charge, or fee liability that otherwise would be due solely as a result of any error or omission in such database provided by the City or designated database provider. The home service provider shall reflect changes made to such database during a calendar quarter, not later than thirty (30) days after the end of such calendar quarter the State has issued notice of the availability of an electronic database reflecting such changes under the "Notice; Updates" subsection above.

D. *Procedure If No Electronic Database Provided.*

1. *Safe Harbor:* If neither the State nor the designated database provider provides an electronic database, a home service provider shall be held harmless from any tax, charge, or fee liability in the City that otherwise would be due solely as a result of an assignment of a street address to an incorrect taxing jurisdiction, if the home service provider employs an enhanced zip code to assign each street address to a specific taxing jurisdiction and exercises due diligence to ensure that each such street address is assigned to the correct taxing jurisdiction. If an enhanced zip code overlaps boundaries of taxing jurisdictions of the same level, the home service provider must designate one specific jurisdiction within such enhanced zip code for use in taxing the activity for such enhanced zip code. Any enhanced zip code assignment changed is deemed to be in compliance with this section. For purposes of this section, there is a rebuttable presumption that a home service provider has exercised due diligence if the home service provider demonstrates that it has:

a. Expended reasonable resources to implement and maintain an appropriately detailed electronic database of street address assignments to taxing jurisdictions;

b. Implemented and maintained reasonable internal controls to promptly correct misassignments of street addresses to taxing jurisdictions; and

c. Used all reasonably obtainable and usable data pertaining to municipal annexations, incorporations, reorganizations, and any other changes in jurisdictional boundaries that materially affect the accuracy of such database.

2. *Termination of Safe Harbor:* The "Safe Harbor" subsection above applies to a home service provider that is in compliance with the requirements of the "Safe Harbor" subsection with respect to a state for which an electronic database is not provided, until the later of:

a. Eighteen (18) months after the nationwide standard numeric code has been approved by the Federation of Tax Administrators and the Multistate Tax Commission; or

b. Six (6) months after the State or a designated database provider in the State provides such database.

26A.03.050. Place of Primary Use.

A. A home service provider is responsible for obtaining and maintaining the customer's place of primary use. Subject to the "Requirement to Maintain Electronic Database or Enhanced Zip Code Listing" section above, and if the home service provider's reliance on information by its customer is in good faith, a home service provider:

1. May rely upon the applicable residential or business street address supplied by the home service provider's customer.

2. Is not liable for any additional taxes, charges, or fees based on a different determination of the place of primary use for taxes, charges, or fees that are customarily passed on to the customer as a separate address under existing agreements.

B. A home service provider may treat the address used by the home service provider for tax purposes for any customer under a service contract or agreement in effect two (2) years after the date of this amendment to this ordinance as that customer's place of primary use for the remaining term of such service contract or agreement, excluding any extension or renewal of such service contract or agreement, for purposes of determining the taxing jurisdiction to which taxes, charges, or fees on charges for mobile telecommunication services are remitted.

26A.03.060. Tax Against Customer.

*Each customer shall accurately report the customer's place of primary use. The customer shall be liable for any taxes not paid by the home service provider as a result of the customer's failure to accurately report the customer's place of primary use.*¹

¹ Ordinance No. 00-35, 11/2/00